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BOOK REVIEWS.

A TREATISE ON THE LAW OF FIRE INSURANCE. By D. OSTRANDER. Second Edition; revised and enlarged. St. Paul, Minn.: West Publishing Co. 1897.

In this treatise the contract of fire insurance and its incidents are thoroughly considered, and presented in conjunction with references to the American cases. To the first edition of five years since, five chapters and a thousand new cases have been added, which increases the volume to one of about eight hundred and fifty pages. The names and citations of the cases are now given at the bottoms of the pages, and lengthy extracts from judicial opinions are occasionally to be found in foot-notes.

The new chapters are entitled Fixtures, Location of Risk, Increase of Hazard, Concerning Liability of Water Supply Companies, and Bailment and Carrier. The chapters treating the important subjects of Subrogation, Warranties and Representations, and Waiver and Estoppel appear to be unusually well given.

The method which has been pursued of giving the law as extracted from cases with general discussion, and the addition of a section at the end of each chapter embodying the conclusions of law makes this a good text book for the student as well as an excellent working one for the lawyer.

D. P. H.

THE DEVELOPMENT OF CODE PLEADING. By CHARLES M. HEPBURN, of the Cincinnati Bar. Cincinnati: W. H. Anderson & Co. 1897.

The urgent, long-felt need of a simple, expeditious and practical system of pleading, led the legislature of New York, in 1848, to pass a "Code of Procedure," with the object of establishing a single form of action for the enforcement or protection of private rights whether legal or equitable. The further purposes of the Act were, the substitution of concise statements (of the decisive facts of a cause) for the technical and multifarious pleadings of the former system, and the granting of authority to the court for bringing in all parties necessary to the determination of the proceeding.

Since that time England, a number of the British Colonies, and twenty-six of the states of the Union, have taken similar measures to procure like results. Other states have been contented with a modification of the Common Law system; but in all jurisdictions attempts have been made to do away with what are generally considered the objectionable features of pleadings at the Common Law.

In view of the varying success attending these endeavors, and of the still unsettled state of opinion as to the best method of obtaining the desired end, Mr. Hepburn has written a very interesting history of ancient pleadings and has analyzed the causes which led to the repudiation of the Common Law system; following this with a comparison of the codes as adopted both in this country and in the British Empire. The object of the author appears to have been to point out the essential elements of any system of code pleading with the hope of aiding in the "progress towards a more simple, uniform and durable American Code." Such a work is both original, and valuable to those interested in the study of the law as a science.

Viewing the subject historically, Mr. Hepburn points out that while originally pleadings were in the simplest possible form, a change soon occurred for the worse, the allegations becoming so verbose and multifarious as to be almost unintelligible in many instances. The substantive law so outgrew the law of procedure (owing to the conservativeness of bench and bar, and the neglect of Parliament) that one could no longer be administered under the forms of the other. In spite of the exemplary maxim of the Common Law "*ubi jus, ibi remedium*" the actual conditions were rather "*ubi remedium, ibi jus*." "The formulary system of the year 1300 was in the main the final system of Common Law procedure in England and America." In order to arrive at justifiable results a recourse was had to legal fictions, and to the expansion of equitable jurisdiction. The development of the law was contorted.

The characteristics common to all the codes are thus summarized : (1) They have all arisen out of the English Common Law procedure, though distinct from and sometimes antagonistic to it. (2) They all provide for the following: (a) "a single judicial instrument—'a single form of action'—for the protection of all primary rights whether legal or equitable; (b) a limited pleading characterized by plain and concise statements of the substantive facts, and none but the substantive facts of the cause of action; (c) the bringing in of new parties, and the joinder of different causes of action between the necessary parties with a view to the complete determination of the whole controversy; (d) the adjustment of the relief according to the substantive rights, pleaded and proven of all the parties before the court, and of each of them be they few or many."

The New York Code of 1848 was experimental, and hastily adopted, but succeeded in giving the impulse to the reform movement which swept over the United States and the Empire of Great Britain. Final results have nowhere been reached, though England acting with deliberation and bearing in mind the results obtained by the American Codes and noting their shortcomings, has wrought perhaps more lastingly than they. Mr. Hepburn has pointed out the desirable course of future development, and has placed the whole subject upon a scientific basis.

M. L., Jr.